IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 767 of 1986

Date of Decision:21-09-2005

==========

GUJARAT STATE ROAD TRANSPORT CORPORATION - Appellant(s)
Versus
DAMAYANTIBEN DAMABHAI TANDEL & 1 - Defendant(s)
(for full cause title, see next sheet)

==========

Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Mr.Justice H.K.Rathod, Judge

Whether approved for reporting? No

For the Appellant(s):
MR HARDIK C RAWAL Adv.

For the Respondent(s):
MR DAKSHESH MEHTA FOR MR DD VYAS, Adv.

==========

PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

1. This Appeal arises out of M.V.Claim Petition No. 10 of 1984 decided by Motor

==========

Whether reporters of Local Papers may be allowed to see the Judgment? Yes

Accident Claims Tribunal, Valsad at Navsari, on August 29, 1985, awarding compensation of Rs.1,70,000/- together with proportionate cost and interest at the rate of 6% p.a. from the date of application till realization, holding the opponents jointly and severally liable for the amount of compensation.

2. Shortly stated, accident took place on 18.8.1983 when Damabhai Saniyabhai Tondel (Conductor) of S.T. Bus No.GRT-7105, on regular trip from Navsari to Onzal-Machhiwad was sandwiched between this bus and another bus No.GRT-7473. He was shifted to Mahavir General Hospital, Surat, where he remained from 19.8.1983 to 29.8.1983. He was kept in the clinic of a private doctor for a day. His right femur and right tibia, fibula were broken. After discharge from hospital, he went there for a day for follow up treatment though

he continued to receive treatment from Dr.V.J.Maroliya of his village Onzal -Machhivad. That apart, he also consulted bone-setter of village Kumkotar. While in the hospital at Surat, plaster was applied to his right leg which was removed by Dr.Maroliya. He could not resume duty for one year. He started working from 3.9.1984 although he could do it before. He was made to sit on reservation window of Navsari Bus Depot. His salary was Rs.831/- per month.

3. Opponents have disputed the claim stating interalia that he was himself negligent for the situation, therefore, not entitled to compensation.

4. Questions for consideration before the Claims Tribunal were, whether the claimant was injured on 18.8.1985 by rash and negligent act

of driver of ST bus No.GRT-7473 and whether he was entitled to compensation, if so, to what extent? After recording evidence and hearing the parties, it is decided that claimant suffered injuries due to the rash and negligent driving of ST Bus No.GRT-7473 by its driver. He was entitled to compensation of Rs.1,70,000/- with proportionate cost and interest at the rate of 6% p.a. from the date of application till payment. Feeling aggrieved by this Award, appellant has challenged it through this Appeal.

5. Both the sides heard through respective counsel appearing for them, record examined carefully. With regard to taking place of accident, there is no manner of doubt that claimant suffered injuries due to the negligence of ST Bus driver. Finding is based on evidence, therefore, confirmed. The main

question pertains to assessment of compensation. Since we are not satisfied with the manner of assessment thereof to some extent, it is re-assessed on the available facts and evidence. At the outset, it may be pointed out that the claimant died on 22.6.2002. He remained in service upto 17.8.1987 since his service were terminated by the appellant from this date on the ground that he could not work as Conductor, having been declared unfit by Civil Surgeon for this post. Lower post he declined due to physical disability, although as per Doctor, physical disability was 35%. At the time of accident, he was receiving Rs.831/- per month salary. Therefore, compensation may be assessed thus:

Deceased could not work for a year and fourteen days i.e. from 18.8.1983 to 2.9.1984, therefore, entitled to Rs.10,387/-. He resumed

duty on 3.9.1984 and continued till 17.8.1987, therefore, entitled to 35% of Rs.831/- per month, which comes to Rs.10,470/-. After termination of service, from 17.8.1987, he would be entitled to compensation till his death, i.e. upto 22.6.2002, meaning thereby, Rs.831x12 = 9,972x15 = Rs.1,49,590 + Rs.6,033 (pain, shock and suffering) + Rs.2,000 (medical expenses). Therefore, total amount of compensation works out to Rs.1,78,470/-

6. Learned counsel for the appellant submits that claimant has not filed any Appeal, therefore, at the most, compensation be confined to Rs.1,70,000/-, awarded by the Claims Tribunal. May be, claimant has not filed any Appeal, but the whole matter is open before this court for consideration in an Appeal at the instance of Corporation. Duty of

the Court is to award just compensation. Just compensation may be more than what is claimed or awarded by the Tribunal erroneously [See: New India Assurance Co. Ltd. v. Sartaj Bahadur Srivastava and others - 2001 ACJ 150 and Nagappa v. Gurudayal Singh and others - 2002 AIR SCW 5348]. Therefore, Appeal is dismissed, Award is modified, claimant is awarded compensation of Rs.1,78,470/- with interest at the rate of 6% p.a. from the date of application till payment. Appellant is directed to deposit / pay the compensation to the claimants within two months. Cost of this Court on parties.

(Bhawani Singh)
Chief Justice

(H.K.Rathod)
Judge

(sunil)